

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning Unauthorized)	
Changes of Consumers' Long Distance)	
Carriers)	
_____)	

**PETITION FOR CLARIFICATION OR, IN THE
ALTERNATIVE, RECONSIDERATION OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA)¹ asks the Federal Communications Commission (FCC) to confirm that a single sentence in its *Third Reconsideration Order*² in this proceeding did not impose a new obligation on local exchange carriers (LECs) to verify tens of millions of carrier change orders that they do not verify today.³ These are orders a LEC receives from its subscribers to make changes in the subscribers' presubscribed carriers when the new carrier is neither the LEC itself nor an affiliate of the LEC. For example, USTA members would have to

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, FCC 03-42, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (rel. Mar. 17, 2003) (*Third Reconsideration Order*).

³ *Third Reconsideration Order* at ¶ 91. "Due to the changes in the competitive landscape that have come to fruition since the adoption of the *Second Report and Order*, and based on our experiences therewith, we now find it necessary, as with other in-bound carrier change calls, to require verification of carrier change requests that occur when a customer initiates a call to a LEC."

verify orders their customers place to change their presubscribed carrier to AT&T, WorldCom or Sprint. Illustrative of the magnitude of the burden that would be imposed, an obligation of this sort would require USTA member Verizon to verify nearly 14 million orders annually, at a cost of more than \$75 million per year.

The *Third Reconsideration Order* did not modify the FCC's regulations to include this requirement. Moreover, the FCC has said that its existing rules do not require verification under these circumstances; and therefore, without a change in the language of the regulations, there can be no new requirement of this sort.

USTA believes that when read in context, this sentence merely requires LECs to verify orders to change to the LEC or the LEC's affiliate. USTA members are concerned, however, that someone may read this sentence to mean that the verification requirement is not limited to these circumstances and that it applies to every order a LEC receives. The FCC should confirm USTA's narrower reading of this language as correct.

If the FCC does not concur in USTA's reading of this language, then it should reconsider and reject this new verification requirement. The FCC did not give interested parties notice that it was considering a requirement that LECs verify all presubscribed carrier change orders received by the LEC. If it had, LECs would have been provided with the opportunity to address the proposal. LECs could then have explained that verification, by the verification methods approved by the FCC, would cost the LEC industry well in excess of 100 million dollars annually. The imposition of such extraordinary costs on the LEC industry where the LEC has no incentive except to efficiently and accurately process a subscriber's change request is unjustified and unreasonable. The costs far outweigh any possible benefit that such a requirement would produce for LEC subscribers.

Background

Section 258(a) of the Act provides that “[n]o telecommunications carrier shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.” The FCC may, therefore, require verification by submitting carriers or executing carriers. It has, however, chosen to require verification only by submitting carriers. Thus, its rules require that “[n]o submitting carrier shall submit a change on the behalf of a subscriber in the subscriber’s selection of a provider of telecommunications service prior to obtaining ... [v]erification of that authorization in accordance with the procedures prescribed in this section.”⁴ A “submitting carrier” is defined as “any telecommunications carrier that requests on the behalf of a subscriber that the subscriber’s telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber.”⁵

When a LEC accepts a carrier change order from a subscriber, it is not a “submitting carrier.” Even if one could conclude that the first part of the definition applied — that the LEC was making a request to itself that the subscriber’s carrier be changed — the second part plainly does not because the LEC does not “seek[] to provide retail services to the end user subscriber.”

In 1998, the FCC confirmed that this was what its rules meant. In its *Second Report and Order*,⁶ the FCC held:

“We note that in situations in which a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer’s choice would not need to be verified by either the LEC or the chosen IXC. In this situation, neither the LEC nor the IXC is the submitting carrier as we have defined it. The

⁴ 47 C.F.R. § 64.1120(a)(1)(ii).

⁵ 47 C.F.R. § 64.1100(a).

⁶ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, FCC 98-334, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508 (1998) (*Second Report and Order*).

LEC is not providing interexchange service to that subscriber. The IXC has not made any requests -- it has merely been chosen by the consumer. Furthermore, because the subscriber has personally requested the change from the executing carrier, the IXC is not requesting a change on the subscriber's behalf. If a LEC's actions in this situation resulted in the subscriber being assigned to a different interexchange carrier than the one originally chosen by the subscriber, however, then that LEC could be liable for violations of its duties as an executing carrier.”⁷

If the LEC is not a “submitting carrier” — and the FCC has found that it is not — then it has no verification requirement in these circumstances.

A number of parties asked the FCC to reconsider various aspects of this order. No one sought reconsideration, however, of the FCC's conclusion that a LEC is not a “submitting carrier” as the FCC has defined that term in its rules, and no one asked the FCC to change that definition to include LECs under these circumstances.

As a result, the *Third Reconsideration Order* did not change the FCC's rules to impose verification obligations on executing carriers. Nor did it change the definition of “submitting carrier.” Without one or another of these changes, the FCC could not have imposed a new verification obligation on LECs. And the *Third Reconsideration Order* adopts neither of these changes.

That order does include the following sentence:

“Due to the changes in the competitive landscape that have come to fruition since the adoption of the *Second Report and Order*, and based on our experiences therewith, we now find it necessary, as with other in-bound carrier change calls, to require verification of carrier change requests that occur when a customer initiates a call to a LEC.”⁸

Staff has advised that this sentence requires a LEC to verify all carrier change orders it receives, including orders to change to carriers unaffiliated with the LEC. While staff may not be the final

⁷ *Id.* at ¶ 93.

⁸ *Third Reconsideration Order* at ¶ 91.

word on interpreting the FCC's intention with respect to this sentence, potentially affected carriers must give due consideration to the FCC staff's opinion and request clarifying or corrective action.

I. The FCC Should Clarify That There Is No New Verification Requirement.

The sentence in the *Third Reconsideration Order* did not change the FCC's rules, and those rules do not require LECs to verify every subscriber-initiated carrier change order that they receive. When read in context, the sentence in the order does not support requiring verification of all carrier changes received by a LEC. The *Third Reconsideration Order* could not have adopted a change of this nature because the FCC gave no notice that it was considering such a change.

A. The Rules Do Not Require Verification.

As shown above, the rules that existed when the *Third Reconsideration Order* was released do not require verification in these circumstances. In 1998, the FCC expressly held that they did not. The *Third Reconsideration Order* did not change these rules; and therefore, the rules that are on the books as a result of that order do not require verification in these circumstances either.

B. The Order Does Not Support Verification in These Circumstances.

When the subject sentence is read in context — when it is read in light of the rest of the paragraph — it is apparent that the FCC's sole concern was the incentive that a LEC might have to attempt to advantage itself if it was not required to verify carrier change orders taken for its own services or those provided by an affiliate. The sentence is in the midst of a discussion concerning the fact that more LECs now offer long distance service — that “many LECs have become (or plan to become) long distance service providers.”⁹ This meant that “LECs that compete with other

⁹ *Third Reconsideration Order* ¶ 91:

“As noted by Sprint and WorldCom above, since the adoption of the *Second Report and Order*, however, many LECs have become (or plan to become) long distance service providers. Given the large numbers of customers that are now or may soon be served by LECs that also provide interexchange services, we find it necessary to modify our decision to exclude from our verification rules those in-bound calls that are initiated by a customer by directly contacting the

carriers for local and long distance services may not be neutral third parties in implementing carrier changes.” This would suggest that a LEC should verify carrier change orders that result from calls subscribers place to the LEC when the carrier being selected is the LEC itself (or an affiliate).

This does not support or justify requiring a LEC to verify changes made to another, unaffiliated carrier. If the FCC was concerned that LECs “may not be neutral third parties in implementing carrier changes,” this would mean that it thought that the LEC might improperly change subscribers to its own services. There is nothing to suggest that a LEC might improperly change the subscriber to some other, unaffiliated carrier, and it is without support in the record for the FCC to conclude that it might. For the FCC to require LECs to verify carrier changes to another, unaffiliated carrier would be nothing less than gratuitous regulation. There is no basis in the record for such regulatory overkill, and the FCC should take the opportunity now to clarify that it did not intend to impose such a sweeping, new verification requirement.

C. The Order Could Not Have Changed the Rules in This Way Because the FCC Gave No Notice That It Was Considering Such a Change.

LEC. The Commission has previously recognized that LECs that compete with other carriers for local and long distance services may not be neutral third parties in implementing carrier changes. Due to the changes in the competitive landscape that have come to fruition since the adoption of the *Second Report and Order*, and based on our experiences therewith, we now find it necessary, as with other in-bound carrier change calls, to require verification of carrier change requests that occur when a customer initiates a call to a LEC. We find that such verification is necessary to deter slamming and as such furthers the goals of section 258. We emphasize however, that we retain our prohibition on executing carrier “re-verification,” *e.g.*, a LEC may not require an additional verification by the subscriber after a carrier submits a carrier change to a LEC (as opposed to a customer seeking a carrier change by calling a LEC directly to request the change). Under such circumstances, the submitting carrier and the customer will have already completed the verification procedures required under our rules, and any LEC-mandated customer re-verification would be redundant and create unnecessary impediments to carrier changes.”

As of 1998, the FCC's rules did not require verification in these circumstances — that's what the FCC said in *Second Report and Order*. None of the petitions to reconsider that order asked the FCC to change this. Accompanying the *Second Report and Order* was a Further Notice of Proposed Rulemaking that gave no indication that the FCC was considering changing the rules, and the FCC has not adopted any additional NPRMs since then.

It is fundamental that an agency must give public notice that it is considering new or amended rules and give interested parties an opportunity to comment on the proposed new or amended rules. That there was no such notice here suggests that the FCC was not considering a rule change, particularly such a major, costly change for LECs.

II. If the FCC Concludes That the *Third Reconsideration Order* Did Change the LEC Verification Rules, It Should Reconsider That Decision.

The FCC should reconsider its decision to require that LECs verify subscribers' requests to change to another carrier other than the LEC or an affiliate of the LEC.

FCC regulations allow for only two forms of verification — a “written or electronically signed authorization”¹⁰ or an oral authorization obtained by an appropriately qualified independent third party.¹¹ There is no other form of verification that is permitted. It would not be satisfactory to use the first verification option in the situation at hand as it would delay implementation of a subscriber's change order until the LEC received the signed LOA back from the subscriber, a period that would often be weeks.¹² Third-party verification would permit prompt implementation of a subscriber's change order. Third-party verification is expensive, however. For a large LEC, the cost to perform a single verification can be about \$2.25. For smaller LECs, the cost can be

¹⁰ 47 C.F.R. § 64.1120(c)(1).

¹¹ 47 C.F.R. § 64.1120(c)(3).

¹² The carrier to which the subscriber wanted to change would no doubt object to delays of this sort.

higher. In addition, it takes the service representative approximately two minutes to explain the verification process to the subscriber and to hand the subscriber off to the verifier. The significant increase in service representatives' workloads resulting from an across the board inbound verification requirement for LECs would require most, if not all, LECs to add or contract for additional staff. The increased expense will produce no material gain for subscribers, and it will result in costs that will have to be recovered from subscribers.

B. The Benefits of Verification Are Minimal at Best.

A number of LECs already verify carrier change orders received to change a subscriber to their long distance affiliates. Thus, if the FCC's concern is the one expressed in *Third Reconsideration Order* — that “LECs that compete with other carriers for local and long distance services may not be neutral third parties in implementing carrier changes” — the practices of some LECs already fully address that concern.


It has been suggested that there may be another benefit of requiring independent verification of these carrier change orders — that verification would produce a record which the FCC might find useful if there is ever a slamming allegation arising from one of these change orders. LECs, of course, already have business records reflecting these orders. The additional benefit that might result from another record is not significant and does not justify the additional time and expense that would be incurred by LECs.

Conclusion

The Commission should confirm that its *Third Reconsideration Order* did not impose this new verification requirement. In the alternative, if the FCC did intend to impose a new verification requirement for LECs, USTA requests that the FCC reconsider the imposition of this new verification requirement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Clarification or, In the Alternative, Reconsideration of the United States Telecom Association was served on this 19th day of May 2003 by electronic delivery or first class, postage prepaid mail to the persons listed below.

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